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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DONALD W. NEWMAN, Derivatively on  
Behalf of Nominal Defendant DITECH  
NETWORKS, INC.,

Plaintiff,

v.

TIMOTHY K. MONTGOMERY, SERGE  
STEPANOFF, WILLIAM J. TAMBLYN, TONI  
M. BELLIN, ROBERT T. DEVINCENZI,  
GREGORY M. AVIS, WILLIAM A. HASLER  
and ANDREI M. MANOLIU,

Defendants,

and,

DITECH NETWORKS, INC.

Nominal Defendant.

Case No. C06-05157 JF

**STIPULATION AND [PROPOSED]  
ORDER TO CONSOLIDATE  
RELATED CASES, APPOINT LEAD  
PLAINTIFFS, LEAD COUNSEL,  
LIAISON COUNSEL, AND SET  
BRIEFING SCHEDULE**

*Caption Continues on Next Page*

*To Be Consolidated With*

JAMES MCKENNA, Derivatively on Behalf of  
Nominal Defendant DITECH NETWORKS,  
INC.,

Plaintiff,

v.

TIMOTHY MONTGOMERY, SERGE  
STEPANOFF, WILLIAM J. TAMBLYN, TONI  
M. BELLIN, ROBERT T. DEVINCENZI,  
GREGORY M. AVIS, WILLIAM A. HASLER  
and ANDREI M. MANOLIU,

Defendants,

and,

DITECH NETWORKS, INC.

Nominal Defendant.

Case No. C06-05242 JF

WHEREAS, there are two related shareholder derivative actions on behalf of Nominal Defendant Ditech Networks, Inc., ("Ditech") pending in this district:

Abbreviated Case Name	Case Number	Date Filed
<i>Newman v. Montgomery</i>	C06-05157	August 23, 2006
<i>McKenna v. Montgomery</i>	C06-05242	August 25, 2006

WHEREAS, the two related shareholder derivative actions arise out of the same transactions and occurrences, involve the same or substantially similar issues of law and fact, and, therefore, should be consolidated for all purposes;

WHEREAS, after conferring, counsel for all parties agree that the cases should be consolidated, Messrs. Newman and McKenna should be appointed Lead Plaintiffs, and Schiffrin & Barroway, LLP should be appointed Lead Counsel.

WHEREAS, counsel for Plaintiffs and Defendants have met and conferred and have agreed to a schedule for filing a Consolidated Complaint and for briefing any motion directed at the Consolidated Complaint;

WHEREAS, the agreed-upon schedule is not for the purpose of delay, promotes judicial efficiency, and will not cause prejudice to any party.

NOW, THEREFORE, it is hereby stipulated by and between Plaintiffs and Defendants through their respective counsel of record as follows:

#### I. CONSOLIDATION OF ACTIONS

1. The following actions are hereby consolidated for all purposes, including pretrial proceedings, trial and appeal:

Abbreviated Case Name	Case Number	Date Filed
<i>Newman v. Montgomery</i>	C06-05157	August 23, 2006
<i>McKenna v. Montgomery</i>	C06-05242	August 25, 2006

2. The caption of these consolidated actions shall be "*In re Ditech Networks, Inc. Derivative Litigation*" and the files of these consolidated actions shall be maintained in one file under Case No. C06-05157 JF. Any other actions now pending or later filed in this Court which

1 arise out of or are related to the same facts as alleged in the above-identified cases shall be  
 2 consolidated for all purposes, if and when they are brought to the Court's attention.

3 3. Every pleading filed in the consolidated actions, or in any separate action included  
 4 herein, shall bear the following caption:

5 **UNITED STATES DISTRICT COURT**  
 6 **NORTHERN DISTRICT OF CALIFORNIA**  
 7 **SAN JOSE DIVISION**

8 In re DITECH NETWORKS, INC.	)	Case No. C06-05157 JF
9 DERIVATIVE LITIGATION	)	
10 This Document Relates To:	)	
11	)	

12 4. When a pleading is intended to be applicable to all actions governed by this Order,  
 13 the words "All Actions" shall appear immediately after the words "This Document Relates To:" in  
 14 the caption set out above. When a pleading is intended to be applicable to only some, but not all,  
 15 of the consolidated actions, this Court's docket number for each individual action to which the  
 16 pleading is intended to be applicable and the abbreviated case name of said action shall appear  
 17 immediately after the words "This Document Relates To:" in the caption described above (e.g.,  
 18 "No. C06-05157 JF").

19 5. A Master Docket and a Master File hereby are established for the above  
 20 consolidated proceedings and for all other related cases filed in or transferred to this Court.  
 21 Separate dockets shall continue to be maintained for each of the individual actions hereby  
 22 consolidated, and entries shall be made in the docket of each individual case in accordance with the  
 23 regular procedures of the Clerk of this Court, except as modified by this Order.

24 6. When a pleading is filed and the caption shows that it is applicable to "All Actions,"  
 25 the Clerk shall file such pleading in the Master File and note such filing on the Master Docket. No  
 26 further copies need be filed, and no other docket entries need be made.

27 7. When a pleading is filed and the caption shows that it is to be applicable to fewer  
 28 than all of the consolidation actions, the Clerk will file such pleading in the Master File only but  
 shall docket such filing on the Master Docket and the docket of each applicable action.

8. When a case which properly belongs as part of *In re Ditech Networks, Inc. Derivative Litigation* is filed in this Court or transferred to this Court from another court, the Clerk of this Court shall:

- (a) Place a copy of this Order in the separate file for such action;
- (b) Mail to the attorneys for the Plaintiff(s) in the newly-filed or transferred case a copy of this Order and direct that this Order be served upon or mailed to any new defendant(s) or their counsel in the newly-filed or transferred case; and
- (c) Make an appropriate entry on the Master Docket. This Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case which properly might be consolidated as of the filing of this Stipulation.

## II. APPOINTMENT OF LEAD PLAINTIFFS, LEAD COUNSEL AND LIAISON COUNSEL

9. Plaintiffs Donald W. Newman and James McKenna shall be appointed Lead Plaintiffs.

10. The law firm Schiffrin & Barroway, LLP shall be appointed Lead Counsel for Plaintiffs in the consolidated shareholder derivative actions.

11. Lead Counsel shall have authority to speak for Plaintiffs in matters regarding pretrial and trial procedure and settlement negotiations, and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

12. Lead Counsel shall be responsible for coordination of all activities and appearances on behalf of Plaintiffs and for the dissemination of notices and orders of this Court. No motion, request for discovery or other pretrial proceedings shall be initiated or filed by Plaintiffs except through Lead Counsel.

13. Lead Counsel shall also be available and responsible for communications to and from this Court. Lead Counsel shall be responsible for the creation and maintenance of a master service list of all parties and their respective counsel.

14. The law firm Bramson, Plutzik, Mahler & Birkhaeuser, LLP shall be appointed as Liaison Counsel and is authorized to receive orders, notices, correspondence, and telephone calls from the Court on behalf of all Plaintiffs and shall be responsible for the preparation and transmission of copies of such orders, notices, correspondence, and memoranda of such telephone calls to Plaintiffs' counsel.

15. Defendants' counsel may rely upon all agreements made with Lead Counsel and Liaison Counsel or other duly authorized representatives of Plaintiffs and such agreements shall be binding on Plaintiffs.

### III. SCHEDULE

16. Plaintiffs shall no later than forty-five (45) days from the entry of this Order file and serve a Consolidated Complaint which will supersede all existing Complaints filed in these actions. Defendants need not respond to any of the pre-existing complaints.

17. Defendants' time to respond to the Consolidated Complaint, whether by pleading, answer, motion or otherwise, shall be no later than forty-five (45) days following the service of the Consolidated Complaint on Defendants.

18. Plaintiffs' opposition to any motion to dismiss filed by Defendants shall be no later than forty-five (45) days following the service of any motion to dismiss.

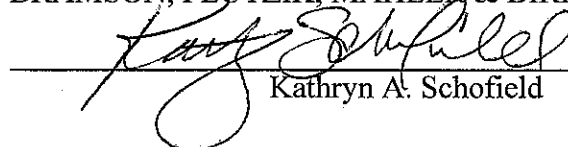
19. Defendants' reply papers, if any, shall be served no later than thirty (30) days after Plaintiffs' opposition.

IT IS SO STIPULATED.

I, Kathryn A. Schofield, am the ECF User whose identification and password are being used to file the Stipulation in compliance with General Order 45.X.B, hereby attest that Diane E. Pritchard has concurred in this filing.

Dated: November 3, 2006

BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER, LLP

  
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Dated: November 3, 2006

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/s/ Diane E. Pritchard

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\* \* \*

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 7, 2006

  
United States District Judge  
Jeremy Fogel